

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOAQUIN DAVID GARCIA ,

Plaintiff(s),

v.

DANIEL T. SATTERBERG,

Defendant(s).

CASE NO. 2:22-cv-00427-TL-JRC

MODIFIED ORDER ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed the June 9, 2022 report and recommendation of Magistrate Judge J. Richard Creatura (the “R&R”) (Dkt. No. 10) and the relevant record on Petitioner Joaquin D. Garcia’s motion to proceed *in forma pauperis* (Dkt. No. 1).

Mr. Garcia filed an objection to the R&R (the “Objection”) on July 8, 2022. Dkt. No. 14. The Objection was filed past the deadline to object—indeed, this Court issued an order adopting the R&R on June 27. Dkt. No. 13. But in consideration of Mr. Garcia’s incarcerated status and his complaints of limited access to timely mail services (Dkt. No. 14, at 1, 5, 7), the Court has reviewed the Objection and issues this modified order on the R&R based on this review.

Mr. Garcia is an incarcerated individual who appears to have the funds necessary to pay the \$5 filing fee for this case (Dkt. No. 1, at 2, 3), meaning that *in forma pauperis* status is not appropriate at this time. *See, e.g., Carter v. Calif. Corr. Inst.*, No. 21-16631, 2022 WL 71638, at *1 (9th Cir. Jan. 3, 2022) (“Pursuant to 28 U.S.C. § 1915(b)(1) and (2), incarcerated appellants proceeding in forma pauperis *must* pay the full amount of the filing and docketing fees *when funds are available in appellant’s account.*” (emphasis added)). The Court has no discretion over this and must follow the law. Mr. Garcia’s Objection does not deny this but, rather, reiterates the request to “be allowed to pay at a later date,” even while seemingly conceding that there are sufficient funds available to pay the fee in his account. Dkt. No. 14, at 3 (“If I’m denied . . . then deduct [from] my account five dollars . . .”).

Accordingly, the Court hereby ORDERS:

- (1) The Court ADOPTS the report and recommendation. Petitioner’s *in forma pauperis* motion (Dkt. No. 1) is DENIED. To proceed in this litigation, Petitioner must ensure that his filing fee is paid.
- (2) If Petitioner does not pay the \$5 filing fee in this matter within **thirty (30) days** of this Order, or by **August 13, 2022**, this matter will be dismissed without prejudice for failure to pay the filing fee. No certificate of appealability will issue.
- (3) The Clerk is DIRECTED to send a copy of this Order to Petitioner and Judge Creatura.

Dated this 14th day of July 2022.



Tana Lin
United States District Judge